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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,335	02/19/2004	S. Collar Waters	CRECON P02AUS	7117

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EXAMINER

VALENTI, ANDREA M

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/782,335

Applicant(s)

WATERS, S. COLLAR

Examiner

Andrea M. Valenti

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20 is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-14, 16-19 is/are rejected.
- 7) ☒ Claim(s) 11, 12 and 15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 8-10, 14, 17 are rejected under 35 U.S.C. 102(b) as being anticipated by French Patent FR 2550073 to Coureau.

Regarding Claims 1 and 14, Coureau teaches a stackable unit and kit for automatically dispensing fluid to at least one growing medium container associated with the stackable unit, the stackable unit comprising: at least one growing medium container (Fig. 1 #10), a reservoir (Fig. 1 #8) having an open top to facilitate filling thereof, a drainage channel (Fig. 1 #13) communicating with the reservoir, and the drainage channel having an inlet located adjacent the open top of the reservoir to facilitate draining of excess fluid from the reservoir; the reservoir having at least one lateral dispensing opening (Fig. 1 #17) for dispensing fluid from the reservoir into growing medium, when accommodated by the at least one growing medium container of the stackable unit; and the least one lateral dispensing opening supporting a capillary member (Fig. 1 #18) which controls flow of fluid from the reservoir to the at least one growing medium container, for providing moisture to thereto to facilitate growing of a plant.

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Regarding Claim 2, Coureau teaches stackable unit defines a central axis and the drainage unit extends substantially parallel to the central axis of the stackable unit but is spaced radially therefrom (Fig. 1 #13 and 14).

Regarding Claims 4 and 17, Coureau teaches the capillary member is a plug which fills the dispensing opening and facilitates passage of fluid, via capillary action, from the reservoir to the growth medium container (Fig. 1 #18).

Regarding Claim 8, Coureau teaches the stackable unit includes a plurality of growing medium containers, and the plurality of growing medium containers are arranged radially symmetrically about the reservoir (Fig. 1 #1).

Regarding Claim 9, Coureau teaches an upper portion of the stackable unit is shaped to matingly engage with a lower portion of another stackable unit to facilitate nesting of at least two stackable units with one another in a nested array (Fig. 1 #7 and 5).

Regarding Claim 10, Coureau teaches an upper portion of the stackable unit forms a male component which matingly engages with a female component of an adjacent lower stackable unit to facilitate nesting of at least two stackable units with one another in a nested array (Fig. 1 #7 and 5).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 6, 7, 13, 16, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent FR 2550073 to Coureau.

Regarding Claim 3 and 16, Coureau is silent on each stackable unit includes at least two growth medium containers and each of the growth medium containers communicates with at least two dispensing openings to facilitate transfer of the fluid from the reservoir to the growth medium container. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely segmenting the container into multiple containers for a multiple effect to accommodate different plant varieties and designs and does not present a patentably distinct limitation.

Regarding Claims 6, 7 and 19, Coureau is silent on the growth medium container is sized to accommodate a volume of growth medium of between about 500 and 5000 cubic inches, and the reservoir is sized to accommodate a volume of fluid of between 25 and 140 fluid ounces and the capillary member has a wall thickness of about between 0.0625 and 0.5 inches so as to facilitate an adequate fluid transfer rate, via the capillary member, such that growth medium contained within the at least one growing medium container is maintained sufficiently saturated. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since the modification is merely a change in size to accommodated different space constraints while optimizing the efficiency of the system to promote healthy plant development and does not present a patentably distinct limitation.

Regarding Claim 13, Coureau is silent on the stackable unit includes a deflection plate associated with the drainage channel which forms a shield and deflects fluid flowing through the drainage channel. However, it would have been obvious to one of ordinary skill in the art to modify the teachings at the time of the invention since it is old and notoriously well-known in the art to utilize deflection as a means to regulate and control the direction and flow of water. One would be motivated to modify the teachings to provide more friction along the surface to slow flow and reduce the noise of the flowing water.

Claims 5 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over French Patent FR 2550073 to Coureau in view of U.S. Patent No. 6,418,664 to Shaw.

Regarding Claims 5 and 18, Coureau teaches a capillary member, but is silent on the capillary member is an elongate tubular member having first and second opposed ends, one end of the capillary tubular member communicates with a first one of the dispensing openings and the second end of the capillary tubular member communicates with a second dispensing opening, and an intermediate portion of the tubular member is accommodated within the growth medium container. However, Shaw teaches a capillary member is an elongate tubular member having first and second opposed ends, one end of the capillary tubular member communicates with a first one of the dispensing openings and the second end of the capillary tubular member communicates with a second dispensing opening, and an intermediate portion of the tubular member is accommodated within the growth medium container (Shaw Fig. 1 #6). It would have

been obvious to one of ordinary skill in the art to modify the teachings of Coureau with the teachings of Shaw at the time of the invention for even distribution of liquid and nutrients to more root surface area within the container.

***Allowable Subject Matter***

Claims 11, 12 and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 20 is allowed.

The following is a statement of reasons for the indication of allowable subject matter:

Cited references French Patent FR 2550073; European Patent EP 0291384; Japanese Patent JP 2003111529 ; U.S. Patent No. 6,470,625 ; U.S. Patent No. 6,205,706; U.S. Patent No. 5,956,899; U.S. Patent No. 5,546,700; U.S. Patent No. 5,411,562; U.S. Patent No. 4,185,414; U.S. Patent No. 4,245,433; U.S. Patent No. 5,146,709; U.S. Patent No. 4,006,559; U.S. Patent No. 6,148,663; U.S. Patent No. 6,672,007; U.S. Patent No. 6,622,430 teach a method of forming a nested array of a plurality of stackable units for automatically dispensing fluid to at least one growing medium container associated with the stackable unit, each stackable unit of the nested array comprising: at least one growing medium container, a reservoir having an open top to facilitate filling thereof, a drainage channel communicating with the reservoir, and the drainage channel having an inlet located adjacent the open top of the reservoir to facilitate draining of excess fluid from the reservoir; the reservoir having at least one

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lateral dispensing opening for dispensing fluid from the reservoir into growing medium, when accommodated by the at least one growing medium container of the stackable unit; and the least one lateral dispensing opening supporting a capillary member which controls flow of fluid from the reservoir to the at least one growing medium container, for providing moisture to thereto to facilitate growing of a plant; stacking the plurality of stackable units one on top of the other to form the nested array.

The prior art of record all fails to show, and fails to make obvious, either alone and/or in combination the method steps in the preceding paragraph along with the steps of filling the reservoir of each of the plurality of stackable units in the nested array, by merely filling a top most reservoir, and allowing fluid to overflow from each reservoir into the drainage channel until each reservoir is filled.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

European Patent EP 0291384; Japanese Patent JP 2003111529 ; U.S. Patent No. 6,470,625 ; U.S. Patent No. 6,205,706; U.S. Patent No. 5,956,899; U.S. Patent No. 5,546,700; U.S. Patent No. 5,411,562; U.S. Patent No. 4,185,414; U.S. Patent No. 4,245,433; U.S. Patent No. 5,146,709; U.S. Patent No. 4,006,559; U.S. Patent No. 6,148,663; U.S. Patent No. 6,672,007; U.S. Patent No. 6,622,430.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-

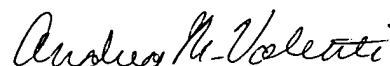


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3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Andrea M. Valenti  
Patent Examiner  
Art Unit 3643

02 September 2004



Peter M. Poon  
Supervisory Patent Examiner  
Technology Center 3600